IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.215 OF 2005

The Janakalyan Co-operative Bank
Ltd. and Anr. ...Petitioners.

Vs.

The Assistant Registrar, C.S.& Anr....Respondents.

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Mr.Shailesh Shah i/b.V.Deshpande & Co. for the Petitioner.

Mr.Anjad Sayeed,AGP for Respondent No.1.

Ms.Shruti Desai for Respondent No.2.

Mr.Rahul Chitnis i/b.Meenakshi Mahashabde for Respondent No.4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 16, 2005.

P.C. :

1. An auction sale has taken place in pursuance of an order dated 1st July 2004 passed by this Court in Writ Petition No.1601 of 2004 (Janakalyan Sahakari Bank Limited & Anr. vs. Shri S.P.

Sangle, Divisional Joint Registrar & Ors.). The order of the Court was confirmed by a Division Bench.

2. The property has been purchased by the Second Respondent at the auction sale. A sale certificate was issued on 24th July 2004. The purchaser addressed a letter to the Co-operative Society on 19th August 2004 and the Bank in the realisation of whose dues, the auction sale took place, addressed a letter dated 25th August 2004 to the Society to admit the purchaser as a member. The society rejected the application for membership by a letter dated 9th September 2004 on the ground that upon the death of the original member, his right, title or interest had devolved on his legal heirs and the heirs had not communicated any intention to the Society to transfer the shares in the name of the purchaser. Reliance was also sought to be placed on "quasi federal principle enshrined in the Constitution of India". The purchaser thereupon addressed a letter to the Society on 20th September 2004, a copy whereof was forwarded to the Registrar of Co-operative Societies, "C" Ward, Mumbai. The purchaser paid transfer fees of Rs.25,000/- on 19th October 2004 to the Society. The Assistant Registrar passed an order on 21st October 2004,

directing the Society to admit the Second Respondent as a member since he has purchased the flat in an auction sale.

3. The grievance of the Bank which has moved these proceedings is that the Co-operative Society is acting at the behest of the Judgment Debtor and is declining to effect a transfer of membership in accordance with law. Prima facie, I am of the view that there is substance in the contention of the submission which has been urged on behalf of the Petitioner having regard particularly to the tone and tenor of the submissions which have been urged before this Court by Counsel for the Co-operative Society. Counsel for the Society urged that the right of the society under Article 300A of the Constitution would be infringed by admitting the auction purchaser as member. The contention requires only to be stated to be rejected. Counsel then urges that the share certificate has not been produced by the original member for transfer. The Society cannot rely on this ground for the simple reason that the transfer has taken place in pursuance of an auction sale held in accordance with law for the realisation of the decretal dues of the Bank. If the original member does not co-operate in completing the ministerial

formalities for recording the name of the transferee as a member of the society, the society is nonetheless duty bound to give effect to the transfer which has taken place in accordance with law. However, it cannot be gainsaid that the remedies which are available under the Maharashtra Co-operative Societies Act, 1960, must be availed of where there is a refusal on the part of the Co-operative Society to admit a person as a member. Section 23(2) confers a right of appeal to the Registrar. The Learned A.G.P. stated that in passing the impugned order dated 21st October 2004, it would not appear that the Assistant Registrar has specifically exercised his appellate powers under Section 23(2) of the Act. In these circumstances, the appropriate directions to pass in these proceedings would be to direct the First Respondent to treat the representation dated 20th September 2004 (Exh.G), a copy whereof was forwarded to him, as an appeal under Section 23(2) of the Act. In the event that the Second Respondent desires to file any supplementary affidavit in support of the aforesaid representation, it would be at liberty to do so within a period of one week from today with a copy to the Third Respondent. The Third Respondent shall submit its reply on or before 4th March 2005.

Parties shall appear before the First Respondent on 7th March 2005. The First Respondent is directed to dispose of the appeal treating it as an appeal under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960, on or before 18th March 2005 after hearing the parties.

4. The Petition is accordingly disposed of. There shall be no order as to costs.

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